IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 1187 of 1996
Date of Decision: 07-09-2007

Bharat Singh ....Petitioner

Versus

Punjab National Bank ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: None for the petitioner.

Shri H.N. Mehtani, Advocate, for respondent No. 1.

HEMANT GUPTA, J.

Challenge in the present revision petition is to the order passed by the learned Executing Court, whereby warrants for auction of the land of the petitioner were issued.

The plaintiff/respondent Bank filed a suit for recovery of Rs.1,15,184/-. The said suit was decreed on 9.4.1990 and the plaintiff was granted interest @ 6% per annum on agricultural loan from the date of filing of the petition till realisation. The appeal was partly allowed in respect of rate of interest vide judgment and decree dated 1.4.1991. In executing proceedings, the petitioner raised an objection that since the loan was taken for the purchase of tractor, the decree holder was not entitled to interest exceeding 6%. The said objections were not entertained and auction was ordered.

In revision before this Court, the petitioner relied

upon the provisions of Haryana Relief of Agricultural Indebtedness Act, 1989 (hereinafter referred to as `the Act'), to contend that the judgment and decree passed by the Civil Court are not in consonance with the provisions of the Act and, therefore, the same cannot be sustained in law.

When the revision petition came up for hearing before this Court on 15.12.2006, the matter was referred to the Larger Bench, to determine the question `whether Section 21-A of the Banking Regulations Act, 1949 can defeat, frustrate or defunct the legislative object for which the Haryana Relief of Agricultural Indebtedness Act, 1989, has been enacted by the State Legislature?' The Division Bench in its order dated 31.5.2007, found that the provisions of the Act have been amended by Haryana Act No. 6 of 1992, whereby sub-clause (xii) in Section 2(g) of the Act, has been added. Such clause excludes the debt due to a Scheduled Bank from the provisions of the Act. In view of the said amendment, it was found that the loanees from the Scheduled Bank cannot claim benefit by invoking the Haryana Act. However, the question `whether the provisions of the amended Act apply retrospectively or not' was found to be beyond the order of reference and, therefore, the same was permitted to be raised at the time of hearing of the revision.

Learned counsel for the respondent-Bank has referred to a judgment of this Court in **Mangat Ram v. Oriental Bank of Commerce, 1999(4) RCR (Civil) 236**. In the aforesaid judgment, it has been held that addition of Clause (xii) in Section 2(g) of the Act, does not infringe any vested or determined right of the loanee. A mere existing right, which may arise out a procedural or other beneficial law, cannot be defended or placed at par with determined or vested right on the date of amendment. Reliance

was placed upon a Full Bench judgment of this Court reported as **Kaka v. Hassan Bano (1998-1) 118 PLR 1**. In the said judgment the Full Bench has held to the following effect:-

> "It is settled principle of law that the rights of the parties which are determined by the orders/judgments of the Courts of competent jurisdiction and have become final are the vested rights in contract to existing rights. Vested rights of a party cannot be taken away by implication. The Legislature by a clear language has no spell out such a consequence on the statue itself. Even the Legislature by enactment of law cannot render a judgment ineffective or redundant."
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> "In the light of this decision we now advert to discuss the scope of retrospectivity of such laws. Every statute is *prima facie* prospective in operation unless it is expressly or by necessary implication made to have retrospective operation. It is only the procedural laws which are normally treated to be retrospective, while the law relating to vested rights is prospective."
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> "The effect of the application of this principle is that cases although instituted under the old Act, but still pending are governed by the new

> procedure under the amended law, but whatever procedures were correctly adopted and concluded under the old law cannot be opened again. (Refer Nani Gopal Mitra v. State of Bihar, AIR 1970 Supreme Court 1636)."

In view of the aforesaid interpretation, the exclusion of Schedule Bank from the operation of the Act would have retrospective effect. I have no reason to deviate from such principle laid down by this Court.

It may be mentioned that the argument that the purchase of the tractor is covered by the definition of debt given in Section 2(g) of the Act, was considered by this Court in **Oriental Bank of Commerce v. Mahabir Singh and others (CR No. 2793 of 1989 decided on 5.4.2007)**. In the said judgment, various clauses of Section 2(g) of the Act were interpreted. The said clauses of Section 2(g) of the Act, are being reproduced hereunder:-

> "S.2(g) "debt" means loan taken for agricultural occupations mentioned in clause (a) and includes construction of room for tubewell, purchase of van or cart etc. for transport of produce and all liabilities owing to a creditor including a bank, in cash or kind, secured or unsecured, payable under a decree or order of a civil court or otherwise] whether due or not due but it does not include-
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> (vii) any debt which represents the price of any goods or property purchased by a debtor;
> (viii) any advance of money given to the debtor by a person as the price of goods or property to be sold later on;
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> (xii) any debt due to a Scheduled bank as defined in clause (e) of section 2 of the Reserved Bank of India Act, 1934 and included in the Second Schedule thereof;
> (xiii) any debt due to the Haryana State Co-operative Apex Bank Limited, Chandigarh, the Central Co-operative Banks, the Primary Co-operative Agricultural Development Banks, and the Primary Co-operative Credit and Service Societies; registered under the Haryana Co-operative Societies Act, 1984."

While interpreting clause (vii) of Section 2(g) of the Act, it was held that since the loan was advanced for a specific purpose i.e. purchase of tractor, therefore, the amount claimed by the petitioner represents the price of the goods to be purchased by the debt out of the loan advanced by the Bank. Relying upon clause (viii), it was held that even if the money advanced by the Bank was disbursed to the borrower, it was an advance of money given to an agriculturist for the purpose of purchase of tractor, therefore, it is excluded from the definition of the debt under Section 2(g) of the Act.

In the present case, the Civil Court granted degree in the suit for recovery of amount on 9.4.1990. The loan for the purchase of tractor was advanced and sanctioned against the hypothecation and mortgage of the property. Therefore, the principles laid down in the aforesaid judgment, are fully applicable to the facts of the present case as

well.

Consequently, I do not find any patent illegality or irregularity in the findings recorded, which may warrant interference by this Court in exercise of its revisional jurisdiction.

Hence, the present revision petition is dismissed.

07-09-2007 (HEMANT GUPTA)
ds JUDGE